

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:10-CR-319-FL-1
5:12-CV-2-FL

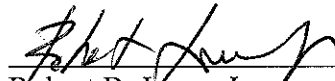
JAMES KENNETH SHUFFORD,)	
)	
Petitioner,)	
)	
V.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

On March 30, 2012, the government moved to dismiss Petitioner's motion to vacate his sentence in accordance with 28 U.S.C. § 2255(f). [DE-38]. As grounds for dismissal, the government has cited Petitioner's plea agreement in which he purportedly waived his right to review under § 2255 and the government argues further that the principles of *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc) are not retroactive upon collateral review. [DE-38 at 1]. In a subsequent brief entitled "Government's Supplemental Memorandum of Law as to Petitioner's Motion to Vacate, Set Aside or Correct Sentence", filed after Defendant's response to the government's motion, the government appears to abandon these two positions. [DE-41 at 2]. The government maintains however, without further articulation, that "petitioner is nonetheless still not entitled to relief due to his procedural default." *Id.* Additionally, the government now appears to contend that contrary to Defendant's purported assertions, Defendant is not actually innocent. *Id.* at 3-6. Petitioner has not responded to the government's actual innocence argument because it was raised anew in the government's supplemental brief.

First, the government is hereby directed to particularize the procedural default it contends

precludes Petitioner's collateral attack of his sentence. The government shall submit its response within fourteen (14) days. Thereafter, within twenty-one (21) days following service of the government's particularization, Petitioner shall be allowed to submit briefing responsive to the government's particularization as well as the actual innocence argument raised by the government in its supplemental brief.

So ordered, the 9th day of October, 2012.



Robert B. Jones, Jr.
United States Magistrate Judge